

REMARKS

Applicant has fully considered the Non-Final Office Action mailed September 25, 2006, and respectfully requests reconsideration of the application.

The Examiner reopened prosecution in view of the Applicant's Appeal Brief filed on July 26, 2006. The Examiner withdrew all of the previous rejections, which were all under 35 U.S.C. §103(a) and primarily based on the combination of Richter et al. (U.S. Patent No. 6,363,587) and Kato (U.S. Patent No. 5,926,926). The Examiner set forth new grounds of rejections. Claims 1-16 are pending in the application. Claims 1-16 have been rejected.

Claim Rejections

Claims 1-5, 12, and 14-16 are rejected under 35 U.S.C. §102(e)

The Examiner rejected claims 1-5, 12, and 14-16 under 35 U.S.C. §102(e) as being anticipated by Richter et al. (U.S. Patent No. 6,363,587). The Examiner previously acknowledged that Richter fails to disclose the backing layer of the release tape entirely covering the mechanical fastener material of the fastening tape. (Office Action, November 3, 2005, page 3.) The Examiner now contends that Richter does teach this feature in Fig. 2, which allegedly shows the mechanical fastener being covered by the backing layer of the next layer of tab tape in roll form. Applicant respectfully traverses this rejection.

Richter teaches a mechanical fastener tape tab element comprising a tape tab backing (33) provided with a pressure-sensitive adhesive layer (36) that allows for attachment of a mechanical fastener material (31) and release tab (35). The tape tab backing (33) is separated into three distinct portions along its length – a first distal end portion (37), an inner tab portion (34), and a second distal end portion (39). The release tab (35) is positioned along the inner tab portion (see Fig. 4). A mechanical fastener is adhered to second distal end portion (39) of the backing tape. The mechanical fastener tape tab laminate of Richter allows the tab to remain in a folded condition around the edge of a diaper prior to use.

A reference fails to anticipate a claim unless it teaches each and every element as set forth in the claim. (M.P.E.P. 2131.) In particular, the reference must show the identical invention in as complete detail as set forth in the claim. (Id.) That is, the elements in the reference must be arranged as required by the claim. (Id.)

Richter fails to anticipate the claims. Richter discloses a release tab (35) having a backing layer (47) and an adhesive layer (44). Richter, however, fails to disclose that the backing layer of the release tab (35) entirely covers the mechanical fastener material of the fastening tape. Rather, Richter only discloses that release tab (35) is positioned adjacent to the mechanical fastener along the inner tab portion (34). (See, e.g., '587 patent, col. 5, lines 27-41, and Figs. 3-6, 8-11, and 13.) Therefore, the elements disclosed in Richter are not arranged as required by the present claims. Further, there is simply no teaching or suggestion to reconfigure or move Richter's release tab such that backing (47) entirely covers mechanical fastener (11). Consequently, Richter fails to anticipate the claims.

The Examiner contends that Richter discloses a tape in which the backing layer of the release tape entirely covers the mechanical fastener of the fastener tape. To support this proposition, the Examiner states that Fig. 2 in Richter shows the mechanical fastener covered by the backing layer of the next layer of tab tape in roll form. This, however, still fails to teach a composite tape as set forth in the claims.

The Examiner equates Richter's release tab (35) having backing layer (47) and adhesive (44) to the release tape comprising a backing layer and adhesive layer set forth in claim 1. Therefore, to disclose a tape as set forth in the claims, the backing layer (47) of Richter's tab (35) should cover the mechanical fastener material. But it does not. Rather, Richter's release tab is adjacent the mechanical fastener material. Consequently, Richter fails to disclose the backing layer of the release tape completely covering the mechanical fastener material.

Even if the backing (33) of Richter is disposed about the mechanical fastening elements when in roll form, Richter still fails to teach a composite tape

as arranged in the claims. Claim 1 recites that the backing layer of the release tape entirely covers the mechanical fastener material. If, for example, the tape in Fig. 2 of Applicant's disclosure were rolled about an axis parallel with closure tape (20), the release tape (31) would be disposed between the mechanical fastener material and the fastening tape's backing film. When Richter's tape is rolled, the release tab (35) and backing layer (47) of release tab (35) are still adjacent the hooks (11). That is, backing layer (47) of release tab (35) does not cover the mechanical fastener material. Thus, even in roll form, Richter fails to disclose a tape arranged as required by claim 1.

The above discussion confirms what the Examiner previously acknowledged – Richter fails to disclose a backing layer of a release tape entirely covering the mechanical fastener material of the fastening tape. Consequently, Richter fails to anticipate claim 1 and any claim dependent therefrom. Applicant respectfully requests that the rejection of claims 1-5, 12, and 14-16 under 35 U.S.C. §102(e) be withdrawn.

Rejections under 35 U.S.C. §103(a)

The Examiner rejected claims 6-11 and 13 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of certain other references. The individual rejections are discussed below, but Applicant submits that the claimed invention would not have been obvious in view of Richter in combination with any of the secondary references.

In order to establish a prima facie case of obviousness, there must be (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one skilled in the art, to modify the reference or to combine reference teachings, and (2) a reasonable expectation of success. Further, the prior art references must teach or suggest all the claim limitations. Neither Richter, nor any of the secondary references teach or suggest a release tape wherein the backing layer of the release tape entirely covers the mechanical fastener material.

Claims 6, 7, and 9-11 are rejected under 35 U.S.C. §103(a)

The Examiner rejected claims 6, 7, and 9-11 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Alberg et al. (U.S. Patent No. 6,526,631). Applicant respectfully traverses this rejection.

As previously discussed, Richter fails to teach or suggest a release tape that completely covers the mechanical fastener material of the fastening tape. Alberg also teaches a mechanical fastener tape tab laminate in which the mechanical fastener remains exposed to the inner surface of the diaper. The Examiner merely relies on Alberg for the disclosure of an intermediate section that is extensible, and at least one of the backing film and the backing layer comprising a non-woven polymeric film, an extensible composite, or a textile. Alberg, however, fails to make up for the deficiencies in Richter. Therefore, the combination of Richter and Alberg fails to teach or suggest all of the claim limitations. Consequently, claims 6-7 and 9-11 are not obvious in view of Richter in combination with Alberg. Applicant respectfully requests that the rejection be withdrawn.

Claim 8 is rejected under 35 U.S.C. §103(a)

The Examiner rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Pape et al. (U.S. Patent No. 4,726,971). Applicant respectfully traverses this rejection.

The Examiner relies on Pape for teaching a composite tape forming closure tapes for disposable articles having at least one of the backing film and backing layer comprising paper and for the purpose of forming closures for disposable diapers. Pape, however, fails to cure the deficiencies in Richter. As such, the combination of Richter and Pape fail to teach a composite tape wherein the release tape entirely covers the mechanical fastener of the fastening tape. Therefore, the combination of Richter and Pape fails to teach or suggest all the claim limitations, and fails to render the claims obvious. Applicant respectfully requests that the rejection of claim 8 based on the combination of Richter and Pape be withdrawn.

Claim 13 is rejected under 35 U.S.C. §103(a)

The Examiner rejected claim 13 under 35 U.S.C. §103(a) as being unpatentable over Richter et al. in view of Borgers et al. (U.S. Patent No. 4,795,456). Applicant respectfully traverses this rejection.

The Examiner relies on Borgers for teaching a composite tape forming closure tabs for disposable articles where the bonding section is welded to the disposable absorbent article for the purpose of forming a tab that provides stabilizing means for preventing premature extension of an extensible diaper tab. Borgers also fails to cure the deficiencies in Richter. Therefore, the combination of Richter and Borgers fails to teach a composite tape wherein the release tape entirely covers the mechanical fastener of the fastening tape. Because the combination of Richter and Borgers fails to teach every limitation in the claim, the combination fails to render the claims obvious. Applicant respectfully requests that the rejection of claim 13 be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully request reconsideration and a timely issuance of a notice of allowance for claims 1-16.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 18-0988 under Attorney Docket No. **AVERP3435USA**.

Respectfully submitted,
RENNER, OTTO, BOISSELLE & SKLAR, LLP

By: /Heidi A. Boehlefeld
Heidi A. Boehlefeld
Reg. No. 34,296

1621 Euclid Avenue
19th Floor
Cleveland, Ohio 44115-2191
(216) 621-1113